

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEBRASKA

JEFFREY NEYLON, )  
                        )  
                        )  
Plaintiff,         )                          4:17CV3153  
                        )  
                        )  
v.                     )  
                        )  
BNSF RAILWAY CO., )                          **MEMORANDUM**  
                        )  
                        )  
Defendant.         )  
                        )  
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On September 24 and 25, 2018, Defendant BNSF Railway Co. filed a Motion for Summary Judgment (Filing No. 83), along with a Brief in Support (Filing No. 84), an Index of Evidence (Filing No. 85), and two restricted documents (Filing Nos. 88, 89). On October 15, 2018, Plaintiff filed a Response (Filing No. 95) and an Index of Evidence (Filing No. 96), and Defendant filed a Reply Brief and Supplemental Index of Evidence on October 22, 2018 (Filing No. 98). On December 6, 2018, Plaintiff filed a Motion for Sanctions (Filing No. 103) related to Defendant's alleged withholding of relevant documents until after discovery closed and then moving for summary judgment, "relying on arguments that are belied by those very documents."

On December 12, 2018 (Filing No. 110), the court granted Defendant's Motion for Summary Judgment as to Plaintiff's "medical-treatment claim under 49 U.S.C. § 20109(c)(2)" and denied the motion as to Plaintiff's "injury-reporting claim under 49 U.S.C. § 20109(a)(4)" without prejudice to reassertion following the Magistrate Judge's ruling on Plaintiff's Motion for Sanctions. The Plaintiff's Motion for Sanctions was denied on February 20, 2019. (Filing No. 117.)

On March 7, 2019, Defendant filed a Motion to Reassert and Submit Defendant's Motion for Summary Judgment (Filing No. 118), and Plaintiff responded (Filing No. 120) by filing an additional Index of Evidence (Filing No. 121). After consideration of Defendant's Motion (Filing No. 118) and in light of the additional

evidence filed by Plaintiff, the court will grant the Motion, but will direct the Clerk of Court to docket the Motion (Filing No. 118) as a pending Motion for Summary Judgment. In considering such Motion for Summary Judgment, the court will review all briefs and evidence previously filed in conjunction with the prior Motion for Summary Judgment (Filing No. 83), as well as Plaintiff's additional Response (Filing No. 120) and Index of Evidence (Filing No. 121). Accordingly,

IT IS ORDERED that Defendant's Motion to Reassert and Submit Defendant's Motion for Summary Judgment (Filing No. 118) is granted, but instead of terminating such Motion, the Clerk of Court shall docket Defendant's Motion to Reassert and Submit Defendant's Motion for Summary Judgment (Filing No. 118) as a pending Motion for Summary Judgment filed by Defendant BNSF Railway Co., with a "motion filed" date of 3/7/2019, a "response due" date of 3/28/2019, and a "reply due" date of 4/4/2019. The court will rule on Defendant's Motion for Summary Judgment (Filing No. 118) in the normal course of business.

DATED this 23rd day of April, 2019.

BY THE COURT:

s/ *Richard G. Kopf*  
Senior United States District Judge